

Notice of Allowability

Application No.

10/681,567

Examiner

Kevin M. Bernatz

Applicant(s)

MURAKAMI ET AL.

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview of 1/31/07.
2. ☒ The allowed claim(s) is/are 1,2,4-7,9-24,26-32,43 and 44.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20070215.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Election/Restriction

1. Claims 1, 2, 4 – 7, 9 – 24, 28 – 32, 43 and 44 are allowable. The restriction requirement between Groups I and II and Species Group A and B, as set forth in the Office action mailed on March 21, 2005, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 26 and 27 are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 25 and 33 - 42, directed to inventions withdrawn from consideration because these claims do not require all the limitations of an allowable claim, however the Examiner notes that these claims have been cancelled below and the restriction requirement is therefor rendered moot.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Examiner's Amendment

2. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

3. Authorization for this Examiner's amendment was given in a telephone interview and/or FAX request with Mr. Joseph Maenner on February 2, 2007.

The application has been amended as follows:

- Claim 1, line 5: before "has", the following phrase was inserted: "said first under layer is a magnetic thin film and";
 - Claim 1, line 5: after "structure", the word "throughout" was deleted;
- Claim 2, line 2: after "second under layer", the phrase "which is placed between said recording layer and said first under layer" was deleted;
- Claims 3 and 25 were cancelled;
- Claim 27, line 1: the phrase "25 or" was deleted;
- Claims 33 – 42 were cancelled;
- Claim 43, line 5: before "has", the following phrase was inserted: "said first under layer is a magnetic thin film and";
 - Claim 43, line 5: after "structure", the word "throughout" was deleted;
- Claim 44, line 5: before "has", the following phrase was inserted: "said first under layer is a magnetic thin film and"; and
 - Claim 44, line 5: after "structure", the word "throughout" was deleted;

Reasons for Allowance

4. The present claims are deemed allowable over the references of record since the references of record fail to disclose or render obvious a structure comprising a recording layer and a first under layer which is a magnetic thin film, wherein the first under layer has an amorphous structure and functions as a nucleus for the plurality of columns in the recording layer and has structural units with a width of substantially 2 nm or less.

The prior art of record disclose first under layers comprised of a magnetic film that is either amorphous without any indication of structural units, or crystalline with "structural units" of crystalline grains. However, as noted by applicants, the disclosed and claimed invention "does not recite or infer any other structure besides the amorphous structure in the first under layer" (*page 8 of response*). Therefore, the prior art of record fails to teach or render obvious a magneto-optic recording medium wherein the film structure of the first underlayer is formed as an amorphous structure and also possesses structural units meeting the claimed limitations, as argued by applicants (*pages 8 - 9 of response*).

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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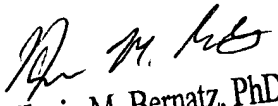
Conclusion

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kevin M. Bernatz whose telephone number is (571) 272-1505. The Examiner can normally be reached on M-F, 8:30 AM - 5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KMB
February 14, 2007


Kevin M. Bernatz, PhD
Primary Examiner